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21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA**

23 U.S. EQUAL EMPLOYMENT
24 OPPORTUNITY COMMISSION,

25 Plaintiff,

26 vs.

27 MEATHEAD MOVERS, INC., and
28 DOES 1-10, inclusive,

Defendants.

Case No.: 2:23-cv-08177-DSF-AGR_x

DISCOVERY MATTER

**JOINT STIPULATION RE: EEOC'S
MOTION FOR PROTECTIVE ORDER
FOR DEPOSITION OF INVESTIGATOR
UNDER LR 37-2**

Hearing: April 8, 2025, 10:00 a.m.

Judge: Hon. Alicia G. Rosenberg

Discovery Cut-Off: 12/2/2025

Pre-Trial Conference: 7/20/2026

Trial Date: 8/18/2026

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Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Local Rule 37-2 of the Central District of California Local Rules, Plaintiff United States Equal Employment Opportunity Commission (“Plaintiff” or “EEOC”) and Defendant Meathead Movers, Inc. (“Defendant” or “Meathead,” or “Meathead Movers”) (collectively “the Parties”) submit this Joint Stipulation regarding EEOC’s Motion for a Protective Order regarding Defendant’s Deposition Notice of EEOC Investigator Benjamin Lidholm (“Investigator Lidholm”).

This motion is made following the conferences of counsel pursuant to L.R. 37-1. *See* Declaration of Andrea E. Ringer (“Ringer Decl.”) at ¶ 6-10. The Parties have been unable to reach a resolution, thereby necessitating the EEOC moving for a protective order.

As the Court stated in the November 4, 2024, informal discovery conference, discovery disputes regarding the application of privilege are properly decided after motion practice. Ringer Decl. at ¶ 11. EEOC contends that Meathead seeks information protected from disclosure by the government deliberative process privilege. Accordingly, in the interests of judicial efficiency, the EEOC brings this motion without first seeking an informal discovery conference. As explained in its portion of this Joint Stipulation, Meathead Movers disputes this and objects to this motion practice in the absence of an IDC with the Court.

I. INTRODUCTION

A. Plaintiff’s Introductory Statement

Good cause exists for the Court to issue an order precluding the deposition of Investigator Lidholm as the discovery sought is neither relevant to the claims or defenses nor proportional to the needs of the case, is unreasonably cumulative and duplicative, unduly burdensome, and invades the government deliberative process privilege and/or other applicable privileges. Fed. R. Civ. P. 26(b)(2)(C)(i)-(iii), 26(c)(1).

Discovery of any “nonprivileged matter” must be “relevant to any party’s

1 claim or defense and proportional to the needs of the case.” Fed. R. Civ. P.
2 26(b)(1). Discovery is not without boundaries, and the federal rules expressly grant
3 courts broad discretion to limit discovery abuses. Fed. R. Civ. P. 26(b)(2). Inherent
4 in the scope of discovery is that a party is not entitled to privileged information.
5 Meathead’s Deposition Notice of Investigator Lidholm seeks irrelevant and
6 privileged information regarding the EEOC’s evaluation of evidence during its
7 administrative investigation into Meathead’s compliance with the Age
8 Discrimination in Employment Act (“ADEA”). The EEOC has already produced
9 all discoverable information from its administrative investigation. Any inquiry
10 outside of privileged and confidential information is wholly duplicative and unduly
11 burdensome given it would require the EEOC to prepare a witness to testify as to
12 what has already been produced. Investigator Lidholm does not have personal
13 knowledge relevant to whether Meathead has engaged in a pattern or practice of
14 discrimination, nor does Investigator Lidholm have personal knowledge relevant to
15 any cognizable affirmative defenses asserted by Meathead. The issue in this
16 litigation is whether Meathead has a pattern or practice of intentional age
17 discrimination in recruitment and hiring. Investigator Lidholm is not a percipient
18 witness to Meathead’s recruitment and hiring practices. Everything Investigator
19 Lidholm knows about Meathead’s compliance with the ADEA is based on what
20 others told him—mostly Meathead and its own staff – all which is hearsay. Unlike
21 Meathead representatives, Investigator Lidholm has no personal knowledge as to
22 the claims and defenses here.

23 As a whole, the deposition of an EEOC investigator here is not proportional
24 to the needs of the case, as the EEOC’s underlying investigation is irrelevant and
25 not subject to judicial review. Meathead’s Deposition Notice appears intended to
26 harass Plaintiff and attack the EEOC’s justification for filing a public interest
27 enforcement action against Meathead. The Deposition Notice unavoidably invades
28 well-established privileges, including but not limited to the deliberative process

1 privilege.

2 Accordingly, good cause exists for a protective order because the discovery
3 sought is privileged, is “outside the scope” of discovery, “unreasonably cumulative
4 or duplicative, or can be obtained from some other source that is more convenient,
5 less burdensome, or less expensive” and Meathead has “ample opportunity to
6 obtain” any discoverable information via less burdensome means. Fed. R. Civ. P.
7 26(b)(2)(C)(i)-(iii). As articulated in greater detail below, a protective order
8 barring the deposition of Investigator Lidholm is warranted to prevent harm to the
9 EEOC.

10 **B. Defendant’s Introductory Statement**

11 Meathead Movers is a small business fighting for its survival while the
12 EEOC continues its protracted and atextual prosecution on behalf of a “class” of
13 “hundreds” of people over the age of 40—still not identified by the EEOC—who
14 were allegedly clamoring to work for modest wages at a moving company that
15 requires its laborers to jog between moving heavy furniture. The EEOC admits
16 that this case arises out of an investigation initiated by the EEOC without a single
17 complaint. What the EEOC fails to disclose is that it is one of only *eight* filed in
18 *ten years* in all federal courts across the country based on such an investigation.¹
19 To put it into context, that is 0.00001% of the total volume of charges the passed
20 through the agency during that decade.²

21 The EEOC’s portion of this briefing does not grapple with this. Instead, the
22 EEOC seeks an order exempting itself from ordinary civil discovery on the
23 grounds that: (1) deposing the investigator would be unreasonably
24

25 ¹ Directed Investigations, U.S. Equal Employment Opportunity Commission,
26 <https://www.eeoc.gov/directed-investigations> (last visited March 11, 2025).

27 ² Enforcement and Litigation Statistics, U.S. Equal Employment Opportunity
28 Commission, <https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0>
(last visited March 11, 2025).

1 cumulative/duplicative and unduly burdensome; (2) the adequacy of the EEOC's
2 investigation and conciliation is not subject to judicial review and therefore not
3 relevant to the claims and defenses asserted; and (3) all of the investigator's
4 testimony is subject to the government deliberative process privilege "and/or other
5 applicable privileges." None support a protective order here.

6 It is neither cumulative nor an undue burden for Meathead Movers to take a
7 single deposition of an employee of the EEOC, the only plaintiff and complaining
8 party. In comparison, the EEOC sought permission to take *fifty* depositions of
9 Meathead Movers' personnel. (Brody Decl., Ex. B at 19–20.) Not only does the
10 burden of *one* deposition on the EEOC pale in comparison, but this deposition is
11 actually the most efficient and least burdensome vehicle for Meathead Movers to
12 try and discover facts related to the EEOC's putative class without deposing each
13 claimant, including their accounts of the circumstances of their alleged
14 discrimination. In the EEOC's own authority, a court rejected identical claims that
15 deposing an investigator is impermissibly cumulative of the investigative file or
16 "places a burden on the agency," dismissing these arguments as "not compelling"
17 on the rationale that "[w]hen the government seeks affirmative relief, it is
18 fundamentally unfair to allow it to evade discovery of materials that a private
19 plaintiff would have to turn over." *EEOC v. California Psychiatric Transitions*,
20 258 F.R.D. 391, 401 (E.D. Cal. 2009) (cited *infra*).

21 The EEOC's next objection that the sufficiency of the EEOC's investigation
22 or conciliation is irrelevant is a red herring. The EEOC concedes that Meathead
23 Movers is not just seeking facts about these issues. (Ringer Decl., Ex. 7 at 1.)
24 Meathead Movers intends to depose the investigator regarding ambiguities in the
25 investigative file and facts known to him as a result of his investigation, which bear
26 directly on the claims asserted by the EEOC in this case and relief sought. *E.g.*,
27 *Cal. Psych. Transitions*, 258 F.R.D. at 397 (permitting deposition to clarify
28 ambiguities and factual aspects of the EEOC's file). The EEOC also misstates the

1 law. Far from being beyond review, the EEOC's cited law confirms that the
2 requirements of administrative exhaustion have teeth that courts are empowered to
3 enforce. *See Mach Mining, LLC v. EEOC*, 575 U.S. 480, 489 (2015) (cited *infra*)
4 (rejecting EEOC's argument that there is no "reviewable prerequisite to suit").

5 The EEOC's arguments about the deliberative process privilege are equally
6 contrary to law. The EEOC itself has relied on factual information from the
7 investigation throughout this case. (*E.g.*, Brody Decl., Ex. C.) As soon as it
8 wanted to avoid discovery, however, the EEOC changed tack. But "[t]he
9 deliberative process privilege is not absolute" and the EEOC has not met its burden
10 of showing it supports a categorical bar on the investigator's deposition where, as
11 here, the EEOC is a party to the litigation. *See In re McKesson Governmental*
12 *Entities Average Wholesale Price Litig.*, 264 F.R.D. 595, 601 (N.D. Cal. 2009);
13 *Cal. Psych. Transitions*, 258 F.R.D. at 397 (denying deliberative process privilege
14 to deposition of EEOC investigator).

15 The EEOC is also abusing the privilege. The EEOC's declaration is a
16 verbatim cut-and-paste from the last one it submitted. (*Compare* Ringer Decl., Ex.
17 1, *with* Brody Decl., Ex. D.) Without speaking to the investigator, the declarant
18 states only boilerplate legal conclusions. (Ringer Decl., Ex. 1.) This is
19 insufficient. *See EEOC v. LifeCare Mgmt. Servs., LLC*, 2009 WL 772834, at *2
20 (W.D. Pa. Mar. 17, 2009) (the EEOC cannot "unilaterally declar[e] all information
21 known to the EEOC as privileged" and "unless and until Defendants actually ask a
22 question at the deposition that intrudes upon the deliberative process privilege or
23 any other alleged applicable privilege, . . . the EEOC's objections are premature");
24 *accord EEOC v. Corr. Corp. of Am.*, 2007 WL 4403528, at *1 (D. Colo. Dec. 13,
25 2007).

26 This litigation is factually and procedurally unique from the handful of
27 unpublished orders the EEOC cites, which only limited depositions based on the
28 specific circumstances of those cases. The EEOC does not cite any decision where

1 a court precluded the deposition of the sole, non-lawyer witness to all of the
2 evidence of alleged discrimination that underpins a lawsuit that the EEOC helmed
3 from the very beginning. Meathead Movers requests that the Court deny the
4 EEOC's request for a protective order and award it its fees opposing this motion.

5 **II. ISSUE IN DISPUTE: WHETHER DEFENDANT MAY TAKE THE**
6 **DEPOSITION OF EEOC INVESTIGATOR BENJAMIN**
7 **LIDHOLM, WHO HAS NO PERSONAL KNOWLEDGE OF THE**
8 **ALLEGED DISCRIMINATION.**

9 **A. Plaintiff's Argument**

10 Meathead has noticed the deposition of EEOC Investigator Lidholm, who
11 was involved in the EEOC's underlying administrative investigation conducted
12 between November 2017 and August 2019. As a preliminary matter, any
13 discovery sought must be relevant and proportional to the needs of the case. Fed.
14 R. Civ. P. 26(b). Meathead has noticed Investigator Lidholm's deposition because
15 it wants to find out what "specific" employment practices of Meathead were
16 investigated, what factual information was found, and about EEOC's identification
17 of claimants. This inquiry goes straight to the heart of the government's
18 deliberative process privilege, which protects from disclosure information that
19 would reveal the pre-decisional mental impressions and decision-making of the
20 EEOC. *See EEOC v. Cal. Psych. Trans.*, 258 F.R.D. 391, 397–98 (E.D. Cal. 2009)
21 ("[A]ny conclusions, interpretations, or recommendations that the investigator
22 formulated would be subject to the [government deliberative process privilege].").
23 Defendant may seek in discovery information regarding what was done in the
24 investigation. To this end, the EEOC has already produced *all* non-privileged
25 portions of its investigative file, which is the best available source of information
26 regarding what occurred in the investigation. The deposition of Investigator
27 Lidholm is very burdensome to the EEOC, and not proportional to the needs of the
28 case because his testimony about the investigation is duplicative of the file, and he
has no personal knowledge of what happened in the workplace. Indeed, the

1 EEOC's underlying investigation is irrelevant because any subsequent trial is *de*
2 *novo*. See, e.g., *EEOC v. Gen. Elec. Co.*, 532 F.2d 359, 370 (4th Cir. 1976)
3 (holding the EEOC's proceedings are not reviewable “[a]nd the court trial is *de*
4 *novo*, completely separate from the actions of the EEOC”); *Cal. Psych. Trans.*, 258
5 F.R.D. at 397 (“[A]n EEOC lawsuit is a trial *de novo* and EEOC’s investigation is
6 not subject to court review.”).

7 Investigator Lidholm’s testimony will ultimately (a) duplicate the
8 investigative file already produced, or (b) be privileged and/or confidential. Given
9 that Defendant is in possession of the best available evidence – the investigative
10 file – it is unduly burdensome for the Commission to produce its employees for the
11 purpose of responding to inquiries about the very same information and objecting
12 based on privilege. Thus, the discovery sought is “unreasonably cumulative or
13 duplicative” of discovery already obtained, unduly burdensome, or “can be
14 obtained from some other source that is more convenient, less burdensome, or less
15 expensive,” and exceeds the scope of discovery and should be precluded. Fed. R.
16 Civ. P. 26(b)(1); 26(b)(2)(C)(i)-(iii).

17 For good cause, the EEOC requests the issuance of a protective order to
18 forbid the deposition of Investigator Lidholm and protect the EEOC from
19 “annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R.
20 Civ. P. 26(c), 26(b)(2). Defendant’s request for testimony from EEOC personnel is
21 oppressive, harassing, costly and with no probative value, and unduly burdensome.
22 Having no relevance to any claim or defense in this case, the intended purpose of
23 this deposition testimony can only be for an improper motive, including to probe
24 into the EEOC’s privileged decision-making process and cause EEOC undue
25 burden and expense by deposing EEOC’s valuable investigative staff.

26 ***i. Factual and Procedural History***

27 The EEOC alleges that, since at least 2017, Defendant Meathead Movers,
28 Inc. has violated the Age Discrimination in Employment Act (“ADEA”) by

1 engaging in a companywide pattern or practice of age discrimination by its
2 ongoing and intentional failure to recruit or hire individuals in the protected age
3 group (age forty (40) and older) (“PAG”) into moving, packing, or customer
4 service positions because of their age.

5 The EEOC is the federal agency charged with enforcing the ADEA. 29
6 U.S.C. § 626(b); 29 C.F.R. § 1626.15 Accordingly, the instant litigation was
7 preceded by the EEOC’s administrative investigation. Pursuant to 29 U.S.C. § 626
8 and 29 C.F.R. §§ 1626.4, 1626.15, that investigation was initiated by a Directed
9 Charge informing Meathead that the EEOC’s Fresno Local Office was
10 investigating Meathead’s compliance with the ADEA, and that the focus of the
11 EEOC’s investigation would be Meathead’s hiring practices at all locations. *See*
12 *Exh. 2 (Charge of Discrimination)*. The Charge identifies the point of contact at the
13 EEOC as Investigator Lidholm. *Id.* The investigation lasted 21 months, and
14 concluded when EEOC Local Director Melissa Barrios issued a Letter of
15 Determination stating that based on an examination of the evidence, the EEOC
16 found reasonable cause to believe that Meathead had subjected a class of
17 individuals age 40 and older to a pattern or practice of discriminatory recruitment
18 and hiring because of their age, and that Meathead had chilled or deterred
19 individuals 40 or older from seeking employment because of their age. *See Exh. 3*
20 *(Letter of Determination)*. This Letter also invited Meathead to begin conciliation
21 discussions, which were ultimately unsuccessful. *Id.*; Ringer Decl. at ¶ 15.
22 Investigator Lidholm was not involved in conciliation as he transferred to another
23 EEOC office. Ringer Decl. at ¶ 15.

24 The EEOC ultimately brought a lawsuit alleging Meathead maintains a
25 pattern or practice of intentional age discrimination. The Complaint details
26 specific employment practices the EEOC contends “individually and together
27 operate to create and maintain a company and company ‘culture’ composed of
28 young employees.” *See ECF No. 1 at 6:17-10:5*. In discovery, the EEOC produced

1 the non-privileged portions of its investigative file, as well as a privilege log
2 identifying documents withheld as privileged. Ringer Decl. at ¶ 13. These include
3 investigative memoranda and other documents that contain or reflect the EEOC
4 staff's analysis of the evidence gathered. Such documents were withheld because
5 they reveal the mental impressions and inner workings of the EEOC and invade the
6 government deliberative process privilege, as well as privileged communications
7 with attorneys. *Id.*; Exh. 9 (Privilege Log).

8 Meathead has noticed Investigator Lidholm's deposition. Exh. 4, 6
9 (Deposition Notices). EEOC asked Meathead to articulate how the discovery
10 sought was relevant and proportional to the needs of the case. Exh. 5 (Objection
11 Letter). Meathead counsel stated that Meathead was seeking testimony regarding
12 (1) which of Meathead's "specific employment practices were being investigated"
13 in underlying administrative investigation; (2) EEOC's identification of claimants
14 during the investigation; and (3) what factual information was found in the
15 investigation. Ringer Decl. at ¶ 9. Meathead counsel disclaimed any intention of
16 seeking information regarding the basis for the directed charge, investigative steps,
17 or litigation, conclusions reached by the EEOC, or internal EEOC processes, but
18 did not agree to limit topics of inquiry in writing or otherwise stipulate to
19 limitations on deposition topics. *Id.* Meathead counsel also stated Meathead was
20 seeking this information for its affirmative defenses, including laches, and that they
21 may have questions regarding documents in the investigative file, though no
22 specifics were provided. *Id.*

23 ***ii. Meathead Seeks Privileged Information from Investigator***
24 ***Lidholm***

25 The Court should issue a protective order barring the deposition of
26 Investigator Lidholm, as Meathead's express purpose of the deposition is to obtain
27 irrelevant information that is protected from disclosure by the government
28 deliberative process privilege. *See* Fed. R. Civ. P. 26(b)(1). The EEOC presents a

1 declaration by the Acting Chair of the EEOC, Andrea Lucas, in support of its
2 assertion of the government deliberative process privilege. *See* Exh. A. The
3 subjects of inquiry also necessarily invade upon the attorney-client privilege.

4 The deliberative process privilege shields from disclosure documents and
5 information “reflecting advisory opinions, recommendations and deliberations
6 comprising part of a process by which governmental decisions and policies are
7 formulated.” *U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 592 U.S. 261, 267
8 (2021) (simplified). The purpose of the government deliberative process privilege
9 is to protect the quality of government decision-making by “maintaining the
10 confidentiality of advisory opinions, recommendations, and deliberations.” *Nat’l*
11 *Wildlife Fed’n v. U.S. Forest Serv.*, 861 F.2d 1114, 1116-17 (9th Cir. 1988). This
12 allows “agencies [to] freely [] explore possibilities, engage in internal debates, and
13 play devil’s advocate without fear of public scrutiny.” *Assembly of Cal. v. Dept. of*
14 *Com.*, 968 F.2d 916, 920 (9th Cir. 1992); *see also Coastal States Gas Corp. v.*
15 *Dept. of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980) (describing purpose of
16 deliberative process privilege). This purpose would be endangered if the EEOC
17 personnel were compelled to testify regarding which specific information that
18 EEOC personnel considered important as part of the investigation, or what facts
19 were “found” during the investigation, or to explain its determination of who
20 qualified as a claimants.

21 As stated above, Meathead has noticed Investigator Lidholm’s deposition so
22 that it can ask which of Meathead’s “specific employment practices” were
23 investigated, what EEOC did to identify claimants, and what factual information
24 was found in the investigation. This inquiry is framed to appear as merely seeking
25 “factual” information, but instead seeks information protected from disclosure by
26 the deliberative process privilege. First, Meathead purports to seek the practices
27 investigated, but the EEOC’s Charge and Letter of Determination identify the
28 practices investigated. Specifically, the Charge states the EEOC was investigating

1 Meathead’s compliance with the ADEA and its focus was Meathead’s “hiring
2 practices” companywide; the Letter of Determination states the EEOC found
3 reasonable cause to believe Meathead engaged in a pattern or practice of
4 discriminatory recruitment and hiring because of age, and that Meathead chilled or
5 deterred older applicants from applying. Exh. 2-3 (Charge and Letter of
6 Determination). The Civil Complaint also identifies specific employment practices.
7 Thus, Meathead is not seeking to know the practices investigated; it already knows
8 that information. By seeking additional information beyond what the Charge,
9 Letter, and Complaint say about the practices investigated, and also seeking what
10 “factual information was found” – more commonly called the “findings of fact” –
11 Meathead seeks something much broader than discrete factual clarifications, the
12 disclosure of which would “require revealing information about the EEOC’s
13 deliberative process, such as its analysis of the information obtained” and “its
14 evaluation of the evidence.” *See E.E.O.C. v. Pinal Cnty.*, 714 F. Supp. 2d 1073,
15 1078 (S.D. Cal. 2010) (quashing deposition of EEOC investigator). In essence,
16 Meathead wants the EEOC investigator to connect the dots between the Charge,
17 the investigative file produced to Meathead, the EEOC’s reasonable cause finding,
18 and the EEOC’s Civil Complaint, and explain how the EEOC got to where it is
19 today. The basis for the EEOC’s reasonable cause finding and litigation
20 allegations is privileged and not discoverable. *Pinal Cty.*, 714 F. Supp. 2d at 1078.
21 Because Meathead’s inquiry goes beyond what the EEOC said in its Letter and
22 Complaint and asks instead about which *specific* employment practices were
23 investigated and what factual findings were made, the inquiry necessarily requires
24 the disclosure of the EEOC’s mental impressions in evaluating the evidence and
25 internal decision-making. These inquiries invade the government deliberative
26 process privilege. *See Cal. Psych. Trans.*, 258 F.R.D. 391, at 397–98.

27 Meathead’s demand for “factual information found” in the EEOC
28 investigation is also improper because this line of questioning goes directly to the

investigator's ordering of and compilation of those facts to reveal the investigator's decision-making process about which facts the investigator consider important for particular aspects of the case. This analysis of evidence directly impinges on the government deliberative process and attorney-client privileges. *See EEOC v. Unicom Elec., Inc.*, No. CV026937CASJTLX, 2007 WL 9359941, *1 (C.D. Cal. Mar. 9, 2007) (barring deposition of investigator where employer sought to learn "exactly what facts [the investigator] learned during her investigation," and explaining government deliberative process privilege would protect the investigator's impressions about that information). This would be tantamount to asking an EEOC representative to "set forth the selected facts which constitute the factual basis of the probable cause finding" or the basis for the suit, which again "would infringe on the deliberative process privilege as it would reveal the EEOC's evaluation and analysis of the extensive factual information gathered by the agency." *Pinal Cnty.*, 714 F. Supp. 2d at 1078; *EEOC v. McCormick & Schmick's Seafood Restaurants, Inc.*, 2010 WL 2572809 at *5-6 (D. Md. June 22, 2010). "Although couched as seeking facts," Meathead's inquiry into factual findings "seek[s] privileged information regarding the decision-making process of the EEOC or compilations of facts" and therefore impermissibly infringes on the deliberative process privilege. *See* Exh. 8 (*EEOC v. Justin Vineyards and Winery LLC et al.*, No. 2:22- cv-06039-MRA-RAO, p. 6 (C.D. Cal. Dec. 10, 2024) (pending review on reconsideration)).

Meathead's inquiry into what the EEOC did to identify claimants and gather evidence is also not a necessary inquiry via deposition as less burdensome means exist to discovery this information. The EEOC's decision making with respect to the identification of class members necessarily involves information protected by the deliberative process privilege. The EEOC's actions taken to gather information or documents from claimants is reflected in the investigative file. The EEOC has produced copies of all communications between EEOC and applicants that

1 occurred during the investigation, including hundreds of questionnaires, as well as
2 any documents obtained from Meathead or from applicants during the
3 investigation. To the extent Meathead's inquiry is what actions were taken by the
4 EEOC to gather documents from applicants that may not be reflected in the
5 investigative documents, this can be more appropriately be sought in written
6 discovery.

7 The investigative process at the EEOC does include connecting the dots
8 between the evidence and the allegations and the ultimate determination—done
9 through investigative memoranda and other documents withheld by the EEOC as
10 privileged. The EEOC's privilege log identifies such documents withheld based on
11 the deliberative process privilege that include the precise information being sought
12 by Meathead: the EEOC's interpretation of the evidence obtained in the
13 investigation, including how Meathead's recruitment and hiring policies and
14 practices showed an intentional preference for young workers, and how EEOC
15 reached a reasonable cause finding. Documents withheld based on the government
16 deliberative process privilege, attorney-client privilege, or other privilege or
17 confidentiality grounds, include investigative memoranda, spreadsheets, notes, and
18 internal communications by EEOC investigators, attorneys, and staff from EEOC's
19 Office of Enterprise & Data Analytics, reviewing and discussing the EEOC's
20 analysis of the evidence, including applicant and hiring data, and deliberating
21 regarding the investigative steps and draft investigative documents. (Exh. 9
22 (Privilege Log). All these materials show the mental impressions of the EEOC
23 during the investigation and how the EEOC reached its reasonable cause finding.
24 Defendant has not challenged the EEOC's privilege log, as the documents withheld
25 are clearly privileged, but it now seeks the very same information by way of
26 deposing the investigator. Either way, the information is privileged.

27 To the extent Meathead seeks the marshalling of facts in support of
28 allegations in the Complaint, this also inherently involves counsel's mental

1 impressions and legal strategy and constitutes protected attorney work-product.
2 *See SEC v. Present*, 2016 WL 10998439, at *3 (D. Mass. May 12, 2016)
3 (precluding Rule 30(b)(6) deposition of SEC on topics regarding factual basis for
4 complaint allegations because this would intrude on attorney work product); *EEOC*
5 *v. Source One Staffing*, 2013 WL 25033 at *7 (N.D. Ill. Jan. 2, 2013) (“Rule
6 30(b)(6) deposition seeking testimony about the facts ‘*supporting or rebutting*’ any
7 claims necessarily would be filtered through an attorney’s mental impressions”);
8 *EEOC v. HBE Corp.*, 157 F.R.D. 465, 466 (E.D. Mo. 1994) (precluding Rule
9 30(b)(6) deposition to “explore the factual bases of the claims made by Plaintiff”
10 because “it is the selection and compilation of the relevant facts that is at the heart
11 of the work product doctrine”). Defendant may not use a deposition of the EEOC
12 to learn the EEOC counsel’s interpretation of the facts and how they have chosen
13 to proceed in preparing their case. *McCormick & Schmick’s Seafood Restaurants,*
14 *Inc.*, 2010 WL 2572809 at *5-6 (“Defendants’ deposition subjects are not asking
15 for clarification of this factual data, but rather for how EEOC’s counsel has
16 marshaled the facts learned during its investigation in support of its case”). The
17 mental impressions of EEOC staff and the information considered leading to the
18 EEOC’s decision to file suit is also protected from disclosure, as this is pre-
19 decisional and shielded by the government deliberative process privilege. *See*
20 *EEOC v. Dolgencorp, LLC*, No 13-cv-04307, 2015 WL 7251947, at *5 (N.D. Ill.
21 Nov. 17, 2015) (EEOC’s analyses in pattern-or-practice case were “predecisional .
22 . . as they arose in the context of evaluating whether or not to sue [the defendant]”).

23 The EEOC’s investigation and findings are not under review and Defendant
24 appears to be on a fishing expedition into how the EEOC internally considered and
25 evaluated information in its decision-making process as it relates to Meathead.
26 This is not a permissible inquiry and a protective order is warranted to prevent this
27 intrusion. *See, e.g., NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975)
28 (preventing disclosure of information related to government agencies’ process of

1 decision-making); *EEOC v. Venator Group*, 2000 WL 1059033, 4* (S.D.N.Y.
2 2000) (sustaining the EEOC’s objection to Rule 30(b)(6) deposition because
3 defendant sought government officials’ opinions, implicating deliberative process
4 privilege).

5 There is no good cause or substantial need for the information sought nor
6 has Defendant asserted any particularized need for information protected by
7 government deliberative process privilege that would outweigh the confidential
8 nature of EEOC’s pre-decisional decision-making process. As explained further
9 below, the information sought is irrelevant to the claims and defenses so there is no
10 basis for the discovery sought other than to harass the EEOC. “Given that ‘[i]n all
11 but exceptional cases it is considered against the public interest to compel the
12 government to produce inter-agency advisory opinions,’” the Court should find
13 Meathead has failed to meet its burden and grant the EEOC’s motion. *E.E.O.C. v.*
14 *FAPS, Inc.*, No. 10-3095 (PGS), 2012 WL 1656738, at *32 (D.N.J. May 10, 2012).

15 ***iii. Depositions of EEOC Personnel Seek Irrelevant***
16 ***Information Beyond the Scope of Discovery and Are***
17 ***Routinely Denied Given Undue Burden***

18 Defendant seeks information that is irrelevant to any claim or defense
19 in this case, rendering the deposition sought beyond the bounds of permissible
20 discovery. Fed. R. Civ. P. 26(b)(1); *Carrera v. First Am. Home Buyers Prot. Co.*,
21 2014 WL 3695403, at *1 (S.D. Cal. July 23, 2014) (good cause for protective order
22 “can be met by showing that the sought after discovery is irrelevant”).

23 First, the EEOC’s pre-suit investigation³ is irrelevant to the claims and
24 defenses in this case. It is well settled that trial is *de novo* in this matter and that an
25 employer may not litigate the adequacy of the EEOC’s investigation and
26 determination. *EEOC v. Sterling Jewelers Inc.*, 801 F.3d 96, 101 (2d Cir. 2015)

27
28 ³ This is the only subject of discovery sought by Meathead in taking Investigator
Lidholm’s deposition.

1 (“courts may not review an investigation” or its scope, but only inquire into
2 “whether an investigation occurred”); *Serrano & EEOC v. Cintas Corp.*, 699 F.3d
3 884, 904 (6th Cir. 2012) (courts may not inquire into sufficiency or scope of
4 investigation); *EEOC v. Caterpillar, Inc.*, 409 F.3d 831, 833 (7th Cir. 2005)
5 (determination of the EEOC is not judicially reviewable); *EEOC v. Keco Indus.*,
6 *Inc.*, 748 F.2d 1097, 1100 (6th Cir.1984) (error for the district court to inquire into
7 the sufficiency of the EEOC’s investigation); *Gen. Elec. Co.*, 532 F.2d at 370 (4th
8 Cir. 1976) (EEOC has no adjudicatory power, its investigation is not reviewable
9 and purely non-adversarial, “trial is de novo, completely separate from the actions
10 of the EEOC”, and noting the “potential for delay and diversion which such an
11 undertaking would create is substantial”); *see also* Exh. 11 (*EEOC v. Swami’s Café*
12 *LLC et al.*, Case No. 3:23-CV-00902-TWR-SBC, ECF No. 36, at *8-9 (S.D. Cal.
13 Aug. 14, 2024) (citing *Sterling Jewelers* and *Marquez Bros.* with approval));
14 *EEOC v. Marquez Bros. Int’l Inc.*, No. 17-CV-0044-AWI-EPG, 2017 WL
15 4123915, at *6 (E.D. Cal. Sept. 18, 2017).

16 Defendant’s questions regarding the sufficiency of EEOC’s investigation are
17 “not a relevant inquiry”. *See* Exh. 8 (*EEOC v. Justin Vineyards and Winery LLC et*
18 *al.*, No. 2:22- cv-06039-MRA-RAO, p. 5 (C.D. Cal. Dec. 10, 2024) (granting
19 protective order against deposition of EEOC investigator and Rule 30(b)(6)
20 witness) (pending review on reconsideration)); *EEOC v. Nat’l R.R. Passenger*
21 *Corp.*, No. C15-1269-RSM, 2016 WL 3655269, at *4 (W.D. Wash. July 8, 2016)
22 (denying discovery seeking to attack sufficiency of EEOC’s pre-suit investigation);
23 *EEOC v. Gold River Operating Corp.*, No. 2:04-cv-01349-LRL, 2007 WL 983853,
24 at *7-8 (D. Nev. Mar. 30, 2007) (“[i]nasmuch as the sufficiency of the EEOC’s
25 investigation is not litigable, the answers to these questions are not relevant”);
26 *EEOC v. Sun Cab Co., Inc.*, No. CV-S-03-1230-KJD-(RJJ), 2004 WL 7089349, at
27 *1 (D. Nev. June 15, 2004) (denying deposition of EEOC employees and finding
28 investigation leading up to letter of determination was not relevant). Accordingly,

1 where, as here, defendants challenge the adequacy or nature of EEOC's
2 investigation, courts have rejected efforts to depose EEOC personnel and denied
3 depositions in their entirety, including on the ground that the information sought is
4 irrelevant. *See id.*; *EEOC v. Evans Fruit Co., Inc.*, CV-10-3033, 2012 U.S. Dist.
5 LEXIS 17003 (E.D. Wash. Feb. 10, 2012) (granting protective order and holding
6 that "[t]he details of the EEOC's investigative and conciliation efforts are not
7 essential to Defendant's understanding and defense" of EEOC's claims); *see also*
8 *EEOC v. Pioneer Hotel, Inc.*, No. 2:11-CV-01588-LRH, 2014 WL 7653921, at *7
9 (D. Nev. Sept. 30, 2014) (finding defendant should not be permitted to depose
10 EEOC personnel regarding adequacy of investigation); *EEOC v. ABM Industries,*
11 *Inc.*, 2010 WL 1006401 at 3* (E.D. Cal. March 5, 2010) (granting protective order
12 where defendant failed to demonstrate deposing the EEOC Director would lead to
13 relevant evidence); *Pinal Cty.*, 714 F. Supp. 2d at 1078 (granting motion to quash
14 deposition); *McCormick & Schmick's Seafood Restaurants, Inc.*, 2010 WL
15 2572809 at *5-6. Even where courts have considered the sufficiency of the
16 EEOC's underlying investigation, judicial review is bare bones. *See* Exh. 10
17 (*EEOC v. Il Fornaio, (America) LLC*, No. 2:22-cv-05992-SPG-JPR, slip op. at 7
18 (C.D.Cal. Nov. 14, 2024) (The "judicial review of the step-by-step requirements
19 conducted by the EEOC is 'relatively bare bones'" (citing *Mach Mining*, 575 U.S.
20 at 494)). In such circumstances, courts have not permitted discovery into the
21 EEOC's decision-making process as part of that challenge to the sufficiency of
22 EEOC's investigation, as this information is squarely subject to the government
23 deliberative process privilege.

24 Second, the EEOC has already produced thousands of pages of discovery
25 representing the non-privileged portions of its investigatory file. Ringer Decl. at ¶
26 17. These documents show the investigative steps taken by EEOC as well as the
27 factual information obtained by EEOC during that investigation. It includes the
28 charge of discrimination, requests for information sent to Meathead, Meathead's

1 responses thereto, correspondence between EEOC and Meathead during the
2 investigation, notes of interviews conducted by EEOC personnel, applicant records
3 produced by Meathead (and scanned by the EEOC), documents and questionnaire
4 responses from applicants, the letter of determination, and all communications
5 exchanged with applicants during the investigation. In light of the documents
6 provided to Defendant, any information that could be learned through the
7 deposition of EEOC personnel would be duplicative and cumulative of the
8 discovery already provided by EEOC. Ringer Decl. at ¶ 17. EEOC personnel do
9 not have independent, personal knowledge of any facts relevant to this litigation.
10 Questions about the investigative file outside the four corners of the investigative
11 file necessarily encroach into areas protected by the governmental deliberative
12 process privilege, as well as the attorney-client privilege, to the extent Mr. Lidholm
13 consulted with counsel for the EEOC during the investigation.

14 Given that Meathead is already in possession of the best available evidence,
15 it is unduly burdensome for the EEOC to produce its employees for a deposition
16 for the purpose of responding to inquiries about the same information. District
17 courts deny depositions of EEOC employees on the grounds that the deposition
18 testimony is unnecessarily duplicative and burdensome. *See, e.g., Venator Group*,
19 2000 WL 1059033 (prohibiting deposition of EEOC investigator where defendant
20 could not explain why deposition would likely lead to additional evidence not
21 already turned over and deposition would be complicated by difficult privilege
22 objections); *HBE Corp.*, 157 F.R.D. at 466-67 (granting EEOC's motion for
23 protective order on Rule 30(b)(6) witness where EEOC "fully complied with all of
24 the defendant's discovery requests, including turning over its complete
25 investigative file and identifying all witnesses . . ."). Any possible value is far
26 outweighed by the burden this deposition would place on EEOC, by requiring it to
27 produce a deponent to reiterate the information contained in paper discovery
28 already produced. *See, e.g., Pinal Cnty.*, 714 F. Supp. 2d at 1078 (granting motion

1 to quash deposition because investigative file is “likely the best source of . . .
2 information” about the investigation). These reasons alone provide a basis to grant
3 EEOC’s motion.

4 Third, the burden to appear for deposition is heavy on the EEOC, especially
5 where as here, the investigator lacks personal knowledge as to the claims and
6 defenses and the actual deposition testimony sought is irrelevant and either
7 duplicative or privileged. The EEOC processes thousands of inquiries and charges
8 per year, and individual investigators often investigate hundreds of charges per
9 year. The EEOC’s ability to process and investigate charges will be severely
10 hampered if its employees are routinely required to take time from their jobs to
11 prepare for and attend depositions on any of the hundreds of charges they have
12 investigated. Thousands of lawsuits, including by private litigants, are filed each
13 year alleging violations of the statutes the EEOC is charged with enforcing. This
14 agency would be unable to function effectively if its employees were required to
15 give depositions in even a fraction of these cases, a genuine risk because the
16 EEOC’s investigation is no more relevant in this case than any other. Thus,
17 allowing deposition of an investigator here only invites private litigants to do the
18 same. Such depositions are unduly burdensome and oppressive upon the EEOC
19 and public resources. This is not just the EEOC’s budget—these are taxpayer funds
20 that are squandered on a deposition without probative value. Moreover, given the
21 large number of cases Mr. Lidholm has investigated during his time with the
22 EEOC, it is unlikely that he would recall any non-privileged information that is not
23 already contained in the investigative file. Again, Investigator Lidholm has no
24 personal knowledge regarding Meathead’s recruitment and hiring practices;
25 everything he knows is based on what others told him – bald hearsay. Thus,
26 Investigator Lidholm’s testimony will not lead to the discovery of any information
27 that has the “tendency to make a fact more or less probable” that is “of
28 consequence” to the EEOC’s claims or Defendant’s asserted defenses. *See Fed. R.*

1 Evid. 401. It is burdensome and inefficient to require EEOC to produce its
2 employees for deposition where their testimony can go no further than the
3 documentary evidence already produced, where they have little to no recall of the
4 investigation conducted, and where any other information the employee could
5 possess is protected from disclosure by privilege. *See Evans Fruit Co., Inc.*, 2012
6 WL 442025, at *4 (quashing deposition instead of permitting it to proceed with
7 EEOC objecting based on privilege because “[t]his would be an inefficient use of
8 the parties’ time and the court’s time”).

9 The deposition will also create a burden on the Court. Given the privileged
10 nature of the subjects of inquiry, the EEOC would be forced to make countless
11 privilege objections, which will likely require Court intervention given the Parties
12 clearly disagree on the application of the government deliberative process
13 privilege. The EEOC wishes to avoid burdening the Court and as such believes a
14 protective order is a more judicially economical approach. Thus, because more
15 convenient, less burdensome, and less expensive sources exist for Defendant to
16 obtain the information sought under these topics, the deposition should be
17 precluded under Rules 26(b)(2)(C) and 26(c)

18 Defendant should also not be permitted to take the deposition for the sole
19 purpose of asking questions about the investigative file documents. Meathead has
20 made no effort to identify relevant information in the investigative file that requires
21 clarification, despite the EEOC expressly asking Meathead to articulate its purpose
22 for the deposition. *Pinal Cnty.*, 714 F. Supp. 2d at 1078 (denying deposition of
23 investigator where the defendant’s failure to show what ambiguities existed in the
24 records).

25 Accordingly, for good cause, the EEOC requests the issuance of a
26 protective order to protect the EEOC from “annoyance, embarrassment,
27 oppression, or undue burden or expense,” and to prohibit Defendants’ discovery
28 abuses in this case. Fed. R. Civ. P. 26(c), 26(b)(2). Defendant’s request for

1 testimony by EEOC personnel is oppressive, harassing, costly and with no
2 probative value, and unduly burdensome. Having no relevance to any claim or
3 defense in this case, the intended purpose of this deposition testimony can only be
4 to harass and annoy the EEOC by seeking invasive, internal information.

5 ***iv. EEOC Testimony is Not Relevant to Meathead's Defenses***

6 Investigator Lidholm's testimony is also not relevant to any legally
7 cognizable affirmative defenses. Defendant's Second Amended Answer includes
8 the following asserted affirmative defenses: (1) Reasonable Factor Other Than
9 Age; (2) Failure to Fulfill Statutory Prerequisite to Suit; (3) Failure to State a
10 Claim Upon Which Relief May be Granted; (4) No Damages; (5) Failure to
11 Mitigate; (6) No Willful Conduct; (7) Good Faith; (8) Laches; (9) Injunctive Relief
12 Improper; (10) No Vicarious Liability. *See* ECF No. 74 at 9-17. As a preliminary
13 matter, as articulated in the EEOC's Motion to Strike, Meathead's First, Second,
14 Third, Fourth, Sixth, Seventh, Ninth, and Tenth Affirmative Defenses are not
15 legally cognizable and/or do not provide fair notice of the basis for the defenses.
16 *See* ECF No. [Insert]. Further, Investigator Lidholm has no information regarding
17 any of these defenses other than the Second Affirmative Defense (Failure to Fulfill
18 Statutory Prerequisites) and the Eighth Affirmative Defense (Laches).

19 Meathead's Second Affirmative Defense (Failure to Fulfill Statutory
20 Prerequisites to Suit) is not a valid affirmative defense. EEOC has fulfilled its
21 conditions precedent, which include (1) a charge of discrimination, (2) notification
22 to the employer, (3) an investigation, (4) a cause determination, (5) an attempt to
23 resolve through conciliation, and (6) a notice of failure of conciliation. *Mach*
24 *Mining, LLC v. EEOC*, 575 U.S. 480, 483-84 (2015). Meathead does not dispute
25 this. *See* ECF No. 74 at 11-14. Pleading satisfaction of conditions precedent is
26 generally sufficient, which the EEOC has done. *See* Fed. R. Civ. P. 9(c).
27 However, Meathead's Second Affirmative Defenses includes numerous allegations
28 regarding the *sufficiency* of the EEOC's investigation and conciliation efforts. It

1 appears Meathead seeks discovery from Investigator Lidholm in support of this
2 effort. This oversteps the bounds of judicial review of EEOC investigations and
3 conciliation.

4 As explained above, EEOC's pre-suit investigation is irrelevant as this
5 litigation is conducted *de novo* and the *sufficiency* of the underlying administrative
6 investigation and conciliation efforts is not subject to judicial review. *See Sterling*
7 *Jewelers Inc.*, 801 F.3d at 101 (courts review only whether an EEOC investigation
8 occurred and do not inquire into its sufficiency); *Gen. Elec. Co.*, 532 F.2d at 370
9 (4th Cir. 1976) (holding the EEOC's proceedings are not reviewable); *Serrano*, 699
10 F.3d at 904 (courts may not inquire into sufficiency or scope of investigation);
11 *Caterpillar, Inc.*, 409 F.3d at 833 (7th Cir. 2005) (determination of the EEOC is
12 not judicially reviewable); *Keco Indus., Inc.*, 748 F.2d at 1100 (error for the district
13 court to inquire into the sufficiency of the EEOC's investigation); *see also* Exh. 11
14 (*Swami's Café LLC et al.*, Case No. 3:23-CV-00902-TWR-SBC, ECF No. 36, at
15 *8-9 (S.D. Cal. Aug. 14, 2024) (EEOC's pre-suit investigation is subject to limited
16 judicial review)); *EEOC v. Marquez Bros. Int'l Inc.*, No. 17-CV-0044-AWI-EPG,
17 2017 WL 4123915, at *6 (E.D. Cal. Sept. 18, 2017). Nothing said, done, or
18 produced during the pre-suit investigation and conciliation is relevant to the
19 Parties' claims or defenses given the EEOC met its statutory prerequisites by
20 providing Meathead notice that its hiring practices and compliance with the ADEA
21 were being investigated by the EEOC, it conducted an investigation and notified
22 Defendant of its findings, and it engaged in conciliation efforts, which failed. This
23 is all that is required for the EEOC to meet the pre-requisites for filing a lawsuit.
24 *See* Exh. 10 (*EEOC v. Il Fornaio, (America) LLC*, No. 2:22-cv-05992-SPG-JPR,
25 slip op. at 7 (C.D.Cal. Nov. 14, 2024) (The "judicial review of the step-by-step
26 requirements conducted by the EEOC is 'relatively bare bones'"); *see Mach*
27 *Mining, LLC*, 575 U.S. at 492, 494 (2015) (courts look "only to whether the EEOC
28 attempted to confer about a charge, and not to what happened").

Investigator Lidholm’s testimony will also not result in new information of consequence to Meathead’s Eighth Affirmative Defense (Laches). As an initial matter, the EEOC is not subject to laches. Generally, “laches is not a defense against the sovereign.” *Costello v. United States*, 365 U.S. 265, 281 (1961); *see United States v. Angell*, 292 F.3d 333, 338 (2d Cir. 2002) (citations omitted) (“laches is not available against the federal government when it undertakes to enforce a public right or protect the public interest.”). Even if the EEOC were subject to a laches defense, it requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense. *EEOC v. Lakemont Homes Inc.*, 718 F.Supp.2d 1251, 1255 (D. Nev. 2010) (citing *Bratton v. Bethlehem Steel Corp.*, 649 F.2d 658, 666-7 (9th Cir. 1980)). Investigator Lidholm’s involvement in the matter ended in September 2019, therefore his testimony will not produce relevant information for Meathead’s asserted laches defense. Meathead cannot establish laches based on the investigation lasting less than two years, a relatively short period of time given the companywide scope of the investigation. The investigative file alone establishes the EEOC’s diligence in completing the investigation.

In conclusion, Defendant expressly seeks privileged information regarding the EEOC’s evaluation of evidence. Any non-privileged information sought is clearly not “proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). Testimony by EEOC investigators without personal knowledge relevant to the claims and defenses is not important; it will not resolve any issues in the case; it strains already limited resources of EEOC, which are taxpayer funds. In short, the burden and expense of this discovery far outweighs any potential benefit. Defendant already has access to

1 information regarding EEOC's investigation. The deposition of EEOC employees
2 is unduly burdensome and oppressive, and cumulative and duplicative of
3 information produced in the investigative file, the non-privileged portions of which
4 were already produced. The investigative file is the best source of information
5 regarding the EEOC's investigation. The deposition is beyond the scope of what is
6 permitted by Fed. R. Civ. P. 26(b)(1) and good cause exists to preclude it. *See*
7 *Evans Fruit Co., Inc.*, 2012 WL 442025, at *4 (quashing deposition instead of
8 permitting it to proceed with EEOC objecting based on privilege because "[t]his
9 would be an inefficient use of the parties' time and the court's time").

10 **B. DEFENDANT'S ARGUMENT**

11 **i. The EEOC Violated Its Duty To Seek A Discovery**
12 **Conference Prior To Burdening The Court And Meathead**
13 **Movers With This Motion**

14 The Court's procedures state in bold typeface: "**A party or third party may**
15 **not file a discovery motion without first requesting and attending a discovery**
16 **conference with the Court by remote means or in person.**"⁴ The EEOC does
17 not dispute that it defied this instruction.

18 It has no reasonable justification. It had time: Meathead Movers raised its
19 intent to depose the investigator in January 2025, in advance of serving the Notice
20 of Deposition, and two months before the date the deposition was ultimately
21 scheduled. (Brody Decl. ¶ 2.) It had notice: the parties have already attended an
22 IDC arranged by Meathead Movers, and this requirement is referenced in the
23 EEOC's own meet-and-confer letter about this issue. (Dkts. 49, 53; Ringer Decl.,
24 Ex. 5.) Instead, the EEOC asked Meathead Movers to reschedule the deposition to
25 accommodate counsel's conflicts, which Meathead agreed to; asked Meathead
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27
28 ⁴ Honorable Alicia G Rosenberg, U.S. District Court, Central District of California,
<https://www.cacd.uscourts.gov/honorable-alicia-g-rosenberg> (last visited March
11, 2025).

1 Movers to plan the deposition around the witness’s time restrictions, which
2 Meathead Movers agreed to do; confirmed after the parties’ L.R. 37-1 conference
3 that the deposition could proceed as noticed; waited until the week before the
4 deposition; and then served this Joint Stipulation so that Meathead Movers—a
5 small, family-owned moving company—had to expend resources both preparing
6 for the deposition and briefing this. (Brody Decl. ¶ 3, Ex. A.)

7 The EEOC’s statement that this Court suggested “privilege” issues were
8 excused from the required discovery procedures is inconsistent with the letter of
9 the Court’s rules, and does not pass the smell test. Privilege is the last objection
10 referenced in the EEOC’s introduction behind supposed irrelevance, burden,
11 proportionality, and cumulativeness. This is just the latest example in a pattern by
12 the EEOC of eschewing the rules and taking positions that will increase Meathead
13 Movers’ expenses to defend this action. Meathead Movers respectfully requests
14 that the Court deny the Motion and award it the fees and costs incurred related to
15 this Motion under Federal Rule of Civil Procedure 37(a)(5)(B).

16 **ii. The EEOC’s Cases Paint A Disturbing Picture Of**
17 **Overreach By The Trial Attorneys In This Case**

18 As explained *infra*, the caselaw is contrary to the EEOC’s position that
19 courts routinely grant protective orders quashing depositions of EEOC personnel in
20 their entirety. For this reason, the EEOC submitted three slip opinions with the
21 declaration of the EEOC’s lead trial counsel from other cases prosecuted by her
22 and her colleagues. (Ringer Decl., Exs. 8, 10–11.)

23 As an initial matter, as a discovery issue that is largely committed to the
24 discretion of trial courts, it stands to reason that many (if not most) rulings about
25 the appropriateness of particular depositions occur in unpublished minute orders or
26 orally at informal discovery conferences and are not reported to Westlaw. It is
27 highly problematic for a repeat litigant like the EEOC to try and capitalize on the
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1 informational asymmetry this causes by combing its own files for *only* the rulings
2 in its favor and presenting them as settled law.

3 For example, the EEOC never mentions *EEOC v. Sunshine Raisin Corp. et*
4 *al.*, a Title VII case in which the court denied a motion for a protective order filed
5 by the same trial counsel in this case after “find[ing] the weight of authority
6 permits [the defendant] to proceed” with a deposition of the EEOC as to “[f]actual
7 information and documents that support or rebut the claims in [the EEOC’s]
8 Complaint and the remedies sought” and “any and all steps in [its] investigation of
9 the claims asserted in its Complaint,” noting the EEOC could simply “interpos[e]
10 objections as appropriate.” 2023 WL 5596004, at *3 (E.D. Cal. Aug. 29, 2023),
11 *reconsidered on other grounds*, 2023 WL 7926209 (E.D. Cal. Nov. 16, 2023).⁵

12 In any event, the EEOC’s cases reveal a pattern of litigation activity
13 designed, not to do justice, but to force employers through costly, prejudicial,
14 public litigation untethered to the merits. The first of the EEOC’s orders from
15 *EEOC v. Justin Vineyards & Winery LLC* is currently pending review by the
16 district court judge, which the EEOC admits while still relying substantively on the
17 decision under appeal. 2024 WL 5431489 (C.D. Cal. Dec. 10, 2024). In that case,
18 the defendant sought to meet and confer over the depositions of EEOC personnel
19 well in advance of serving subpoenas. *Id.* at *1. According to the briefing, “[t]he
20 EEOC refused to provide potential dates and intentionally delayed meeting and
21 conferring despite repeated requests forcing Defendants to unilaterally notice the
22

23 ⁵ The EEOC has previously minimized this case by insisting that “much of that
24 ruling was overturned by an Article III judge,” which is not true. (Brody Decl.,
25 Ex. G at 4); *See EEOC v. Sunshine Raisin Corp.*, 2023 WL 7926209, at *2 (E.D.
26 Cal. Nov. 16, 2023) (denying reconsideration regarding deposition topics on “the
27 factual bases for the allegations made in the complaint,” “[t]he identity of any past
28 or present employee . . . whom Plaintiff claims to represent in this action, and the
basis for Plaintiff’s claim of representation,” and “[a]ny and all steps in Plaintiff’s
investigation of the claims asserted in its Complaint”). The district court judge
granted reconsideration on only two narrow issues, a factual dispute and the
relevance of the EEOC’s internal policies and practices for investigating sexual
harassment claims—neither of which are germane to this case. *See id.*

1 deposition.” (Brody Decl., Ex. E at 11–12.) Then, the EEOC insisted on “three
2 separate meet and confers” to drag the issue out by two months, until shortly
3 before the discovery cut off. *Id.* When the issue was finally briefed, the EEOC
4 took the position that the deposition notices were untimely—a position the
5 magistrate judge rejected. *Id.*; *Justin Winery*, 2024 WL 5431489 at *1. Although
6 the reconsideration motion was supposed to be heard on March 10, 2025 (Ringer
7 Decl. ¶ 12), counsel requested a continuance on behalf of the EEOC the day before
8 so it will no longer be decided before this Joint Stipulation is heard (Brody Decl.,
9 Ex. F).

10 In the EEOC’s other case, *EEOC v. Il Fornaio, (America) LLC*, which the
11 EEOC cites as barring judicial review of an agency’s administrative activities, the
12 Court actually granted a sixty-day stay of litigation after reviewing the (claimant-
13 initiated) Charge and the EEOC’s Notice of Determination and concluding the
14 EEOC’s lawsuit had stretched impermissibly far from the investigation and the
15 EEOC had thus failed to confer fair notice or conciliate with the employer—
16 exactly what Meathead Movers has alleged in its answer. (Ringer Decl., Ex. 10;
17 Brody Decl., Ex. H.) Even though the charge filed by the former employee in *Il*
18 *Fornaio* was significantly *more* detailed than the EEOC’s against Meathead
19 Movers, the EEOC affirmatively resists its investigator’s deposition by asking the
20 Court to credit its “[p]leading” that it “satisf[ied]” all “conditions precedent.”
21 *Supra* (citing Fed. R. Civ. P. 9(c)); (*compare* Ringer Decl., Ex. 10, at 2 (noting that
22 the *Il Fornaio* Charge contained a “narrative portion” with specific dates and
23 “examples of the challenged conduct”), *with id.*, Ex. 2 (“The focus of the
24 investigation is to examine your organization’s hiring practices at all of your
25 locations.”). Courts have found that language similar to the EEOC’s charge
26 against Meathead Movers is “inadequate.” *EEOC v. PC Iron, Inc.*, 316 F. Supp. 3d
27 1221, 1232 (S.D. Cal. 2018) (“letter of determination [that] simply states that there
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1 was ‘evidence that [employee] was subjected to a hostile work environment,’” was
2 “vague,” “conclusory,” and “inadequate.”).

3 The EEOC’s disregard for administrative exhaustion was also a problem in
4 the EEOC’s third case, *EEOC v. Swami’s et al.*, another Title VII sexual
5 harassment case that began with an actual charge of discrimination filed by an
6 employee of the defendant, unlike here. (*See* Ringer Decl., Ex. 11.) The motion-
7 to-dismiss decision included with the EEOC’s declaration highlights the EEOC’s
8 rushed prosecution, noting that the EEOC served multiple “Letters of
9 Determination” addressed to “inconsistent” corporate entities and without
10 “findings of reasonable cause”; that the EEOC never notified the defendants that
11 the EEOC had ended conciliation before filing its lawsuit; and that the EEOC’s
12 administrative documents were “riddled with typos.” (*Id.* at 5, 8, 12.) The Court
13 went on to affirm that defendants were entitled “to raise the EEOC’s failure to
14 comply with its pre-suit administrative obligations as an affirmative defense.” (*Id.*
15 at 17.)

16 When a party repeatedly violates Congress’s clearly designed administrative
17 scheme the Court must take notice of the prejudice caused by this pattern of
18 conduct. As the EEOC repeatedly points out, this behavior is funded with
19 “taxpayer” dollars. Notably, all of the EEOC’s other cases involved actual
20 employees (i.e., who were qualified for employment by virtue of being hired in the
21 first place) who proactively asserted claims of sexual harassment with factual
22 detail absent from the EEOC’s Charge and Notice of Determination here. Even
23 though the EEOC was going after much bigger business than Meathead Movers, all
24 of those claimants’ charges were filed *after* the EEOC *sua sponte* launched its
25 investigation into Meathead Movers, and the federal cases were filed sooner.⁶

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27 ⁶ In *Justin* the claimant filed an EEOC Charge in June 2018 and the EEOC filed a
28 complaint in August 2022. C.D. Cal. Case No. 22-CV-06039, Dkt. 1, Dkt. 18 at 5.
In *Il Fornai*, the Charge was in October 2019 and the Complaint was in August

1 And, in contrast to Title VII, ADEA is much narrower and affords unique statutory
2 defenses in recognition of the reality that age, “unlike race or other classifications
3 protected by Title VII, often has relevance to an individual’s capacity to work for
4 non-discriminatory reasons.” *Smith v. City of Jackson, Miss.*, 544 U.S. 228, 233,
5 240 (2005). The Court should not be persuaded by the EEOC’s cherry-picked
6 cases, which do not show that the EEOC’s actions as an agency are beyond judicial
7 review—let alone beyond the scope of civil discovery.

8 **iii. The Motion Is Meritless**

9 **A. The EEOC Bears A High Burden To Resist Discovery**

10 Even the EEOC admits that there is no “per se bar against depositions of
11 EEOC investigators.” (Ringer Decl., Ex. 7.) Its own authority agrees. *See EEOC*
12 *v. Pioneer Hotel, Inc.*, 2014 WL 7653921, at *4 (D. Nev. Sept. 30, 2014) (“The
13 courts have generally stated that in cases in which the EEOC is a party, its
14 investigators and other employees are not entitled to a blanket protective order
15 precluding their depositions absent satisfaction of Rule 26(c)'s requirements.”)
16 (cited *supra*).

17 That is consistent with the fact that the scope of discovery under the Federal
18 Rules is very broad and extends to “any nonprivileged matter that is relevant to any
19 party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P.
20 26(b)(1). The factors that bear on proportionality are “the importance of the issues
21 at stake in the action, the amount in controversy, the parties’ relative access to
22 relevant information, the parties’ resources, the importance of the discovery in
23 resolving the issues, and whether the burden or expense of the proposed discovery
24 outweighs its likely benefit.” *Id.* Contrary to the EEOC’s claim, the rules
25 governing admissibility pose no barrier and whether information is hearsay is not a
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2022. (Ringer Decl., Ex. 10, at 2 & 5.) In *Swami’s the Charge* was in March 2021
and the Complaint was filed in May 2023. (*Id.*, Ex. 11, at 3 & 5.)

1 valid objection to discovery. *See id.* (“Information within this scope of discovery
2 need not be admissible in evidence to be discoverable.”).

3 A party seeking to quash a deposition in its entirety has a particularly heavy
4 burden of establishing “good cause” for the order, which requires it to
5 “demonstrat[e] harm or prejudice that will result from the discovery.” *See Rivera*
6 *v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir. 2004) (discussing standard for a
7 Rule 26(c) protective order). To meet this burden, they “must show a particular
8 and specific need” for protection, and claiming that the “the discovery may involve
9 some inconvenience and expense does not suffice to establish good cause.”
10 *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). Because the
11 Federal Rules provide a “broad allowance for discovery of party witnesses,” it is
12 “very unusual for a court to prohibit the taking of a deposition altogether,” *Apple*
13 *Inc. v. Samsung Elecs. Co., Ltd*, 282 F.R.D. 259, 263 (N.D. Cal. 2012), and “absent
14 extraordinary circumstances, such an order would likely be in error,” *Celerity, Inc.*
15 *v. Ultra Clean Holding, Inc.*, 2007 WL 205067, at *3 (N.D. Cal. Jan. 25, 2007).
16 Against this standard, the EEOC’s arguments fall short.

17 **B. Meathead Seeks Relevant Information**

18 The EEOC’s argument that the *sufficiency* of an investigation (or
19 conciliation) is irrelevant as a matter of law is a straw man, and wrong.

20 Meathead Movers does not have to establish the relevance of testimony
21 showing the insufficiency of the EEOC’s administrative actions to be entitled to
22 depose the investigator. The factual basis of an EEOC investigation and
23 information provided to the investigator by claimants are “unquestionably
24 relevant” to the discrimination claims brought by the EEOC, and investigator
25 depositions are routinely permitted for this reason. *See EEOC v. Greater*
26 *Metroplex Interiors, Inc.*, 2009 WL 412934, at *2 (N.D. Tex. Feb. 17, 2009)
27 (denying EEOC’s motion for a protective order); *see also EEOC v. Def. Ass’n of*
28 *Philadelphia*, 2021 WL 2414586, at *2 (E.D. Pa. June 11, 2021) (granting

1 deposition of investigator); *EEOC v. Roy Farms, Inc.*, 2013 WL 6903756, at *1
2 (E.D. Wash. Dec. 31, 2013) (“Defendant is entitled to question [the investigator]”
3 about “the accuracy of the information contained” in the EEOC’s file and “[t]he
4 EEOC’s objections to the taking of [his] deposition are not well-taken”); *Giezie v.*
5 *Valley Health Sys., LLC*, 2012 WL 3929446, at *8 (D. Nev. Sept. 7, 2012)
6 (overruling objections and permitting defendant to depose investigator about “the
7 factual underpinnings of [the EEOC’s] investigation, including whether an
8 investigation was conducted” about a particular aspect of the employee’s claim);
9 *EEOC v. Presrite Corp.*, 2012 WL 4434055, at *4 (N.D. Ohio Sept. 24, 2012)
10 (“[Employer] is entitled to discover the actual facts [the investigator] found during
11 her investigation.”); *Cal. Psyc. Trans*, 258 F.R.D. at 396–401 (permitting
12 depositions of investigator and separate 30(b)(6) witness over relevance objection);
13 *LifeCare*, 2009 WL 772834, at *2–3 (denying motion for protective order where
14 defendants were “seeking facts obtained by the EEOC during its underlying
15 investigations”); *EEOC v. Burlington N.*, 2008 WL 4845308, at *2 (W.D. Okla.
16 June 23, 2008) (holding employer was “permitted to take the EEOC’s deposition”
17 as “to factual information obtained during its investigation of the charge that bears
18 on a claim or defense at issue in this case and factual information that bears on the
19 damages incurred or other relief sought”); *EEOC v. Midwest Div. - RMC, LLC*,
20 2006 WL 6384881, at *2 (W.D. Mo. May 31, 2006) (“Facts known to
21 [investigator] during his investigation are relevant to this case.”).

22 However, the EEOC is also incorrect that litigation being “de novo” renders
23 all pre-suit activity irrelevant to its claims. *See Cal. Psyc. Trans*, 258 F.R.D. at
24 397 (acknowledging an EEOC lawsuit is de novo but nevertheless permitting
25 employer to depose a 30(b)(6) witness of the EEOC and the investigator). For one,
26 the Ninth Circuit explicitly permits inquiry into the adequacy of EEOC
27 investigations, and the EEOC has not stipulated that it will not rely on the fact of
28 the EEOC’s Notice of Determination at trial or otherwise. *Plummer v. Western*

1 *Int'l Hotels, Co., Inc.*, 656 F.2d 502, 505 (9th Cir. 1981); *see EEOC v. Swissport*
2 *Fueling, Inc.*, 2012 WL 1648416, at *13 (D. Ariz. May 10, 2012) (rejecting
3 argument that “the adequacy of an EEOC investigation is not an appropriate
4 subject on which testimony can be introduced at trial” and ordering EEOC to
5 produce investigator at EEOC’s expense).

6 What the EEOC did during its investigation is also relevant to a number of
7 Meathead’s affirmative defenses, including the EEOC’s failure to fulfill the
8 statutory prerequisites to suit and laches. In this case, the EEOC’s 2017
9 investigation was focused on a narrow timeframe. (*See Brody Decl., Ex. I.*) The
10 agency refused to identify any of the supposed claimants, nor the specific
11 employment practices that the EEOC found potentially discriminatory other than
12 the “Student Athlete Mover” slogan, which Meathead Movers no longer uses.
13 (*Brody Decl., Ex. H.*) There is thus little to no throughline between the people,
14 policies, and timeframe at issue in the investigation versus this litigation.

15 As noted above, the EEOC’s own provided authority confirms courts
16 perform an important function in ensuring the EEOC has engaged in proper
17 exhaustion before coming to court. (*See Ringer Decl., Ex. 10*, at 7–8, 14
18 (explaining that the scope of the EEOC’s court action “depend[s] on the scope of
19 the charge and the EEOC’s investigation” and “a claim exceeds the scope of an
20 EEOC Charge if the claim references different actors, different violations, or
21 different time frames than what is listed in the Charge.”); *PC Iron, Inc.*, 316 F.
22 Supp. 3d at 1232 (defendants asserting affirmative defense of failure to conciliate
23 “ha[d] a point” where “letter of determination [that] simply states that there was
24 ‘evidence that [employee] was subjected to a hostile work environment.’”).

25 The EEOC is incorrect that conciliation is beyond discovery under the
26 Supreme Court’s decision in *Mach Mining, LLC v. EEOC*. There, the Supreme
27 Court rejected the EEOC’s argument that conciliation was not subject to any
28 judicial review, confirming that “to meet the statutory condition, [the EEOC] must

1 tell the employer about the claim—essentially, what practice has harmed which
2 person or class.” *Mach Mining*, 575 U.S. at 488. Courts since have affirmed these
3 are the proper subjects of discovery. *See Sunshine Raisin Corp.*, 2023 WL
4 5596004, at *6 (denying EEOC’s motion for a protective order, holding the EEOC
5 “mistakenly conflates the discovery process with judicial review”); *Wal-Mart*
6 *Stores*, 438 F. Supp. 3d at 762 (S.D. Tex. 2019) (finding discovery proportionate
7 and relevant to the court’s review of conciliation).

8 The EEOC’s contention that Meathead Movers cannot raise a laches defense
9 against the EEOC is contrary to all-fours, binding Ninth Circuit law. In *EEOC v.*
10 *Alioto Fish Co.*, the Ninth Circuit affirmed the grant of summary judgment to the
11 employer on laches grounds in a case where, like here, the EEOC sought
12 “injunctive relief against an alleged pattern and practice of discrimination that
13 continued up to the time the action was brought.” 623 F.2d 86, 88 (9th Cir. 1980).
14 In that case, five years passed between when the employee filed a charge with the
15 EEOC and when the EEOC filed its Complaint—and only four years had passed
16 since the defendant was first notified. *Id.* In determining the prejudice to the
17 defendant, the court considered that personnel had changed and certain witnesses
18 were deceased, and that the delay had dimmed memories and greatly enlarged
19 defendant’s potential back pay liability. *Id.* at 88–89. The court concluded the
20 prejudice attendant to the length of time it took the EEOC to file suit was so severe
21 that it “tainted the entire action and justified its dismissal.” *Id.* at 89. In particular,
22 the court emphasized that “the employment practices of [defendant] and [the local
23 industry] had significantly changed since the time of [employee’s] original charge”
24 and that “[t]he defense to the claim of a pattern and practice of discrimination
25 would require much of the same unavailable evidence needed to defend the
26 original individual charge,” which was already impacted by laches. *Id.*

27 Here, the time between when the EEOC began its investigation into
28 Meathead Movers and when it brought this action was years longer than the lapse

1 in *Alioto*. In the ten years since the EEOC's investigation period began, witnesses
2 involved in the employment decisions have left the company, memories have
3 faded, and some of the EEOC's alleged claimants died. As set forth in Meathead
4 Movers' motion to compel (Dkt. 61), the EEOC has not even managed to collect
5 basic employment information from the supposed class. Meathead Movers is
6 entitled to discovery to demonstrate this change in circumstances and whether the
7 EEOC ever investigated or took steps to preserve relevant evidence before filing
8 suit over an entirely different time period, class, and employment practices. *See*
9 *also EEOC v. Timeless Invs., Inc.*, 734 F. Supp. 2d 1035, 1066–67, 1072 (E.D. Cal.
10 2010) (noting that “[a] defendant may raise the affirmative defense of laches in
11 defense to suits brought by the EEOC” and granting summary judgment to the
12 defendant on those grounds).

13 **C. One Deposition Is Not “Unduly Burdensome” Nor**
14 **Cumulative**

15 Neither the EEOC's caselaw nor common sense supports its argument that
16 one, partial-day Zoom deposition is unduly burdensome in a case where the EEOC
17 is currently seeking upwards of \$15 million and fifty depositions from Meathead
18 Movers. *See Cal. Psyc. Trans*, 258 F.R.D. 391, at 398 (granting motion to compel
19 investigator deposition over EEOC burden objections); *see also Def. Ass'n of*
20 *Philadelphia*, 2021 WL 2414586, at *2 (concluding investigator “will not be
21 unduly burdened by having to be deposed. All litigation causes parties and,
22 sometimes, some of their employees to be distracted from their normal work
23 duties. That is a typical, not an undue, burden.”); *EEOC v. Airborne Express*, 1999
24 WL 124380, at *2 (E.D. Pa. Feb. 23, 1999) (denying EEOC's motion for protective
25 order to prevent deposition of EEOC investigator over EEOC's hardship
26 objection).

27 The EEOC's sole case cited in support of its burden argument is
28 distinguishable. *EEOC v. Evans Fruit Co., Inc.*, 2012 WL 442025 (E.D. Wash.

1 Feb. 10, 2012). The court, however, made that determination based on “20 broad
2 and wide-ranging categories of inquiry listed in Defendant's Amended 30(b)(6)
3 Notice effectively seek[ing] information regarding EEOC's interpretation or
4 evaluation of how particular facts support or refute the allegations in EEOC's First
5 Amended Complaint.” *Id.* at *1. No such facts exist here to counsel the same
6 determination.

7 The EEOC cannot quash this deposition on the grounds that it has turned
8 over its investigative file. *See Cal. Psyc. Trans*, 258 F.R.D. 391, at 397 (granting
9 deposition and holding that turning over its investigation file ““does not relieve the
10 EEOC of its obligation under Rule 30(b)(6) to provide a witness to answer
11 questions about those documents for purposes of clarification and
12 interpretation.””); *LifeCare*, 2009 WL 772834, at *2 (same); *EEOC v. Albertson’s*
13 *LLC*, 2007 WL 1299194, at *1 (D. Colo. May 1, 2007) (defendant need not “be
14 content with the EEOC's investigation file”).

15 The EEOC claims that Meathead “already knows” what the EEOC was
16 investigating based on the Charge and the Letter of Determination, but the fact that
17 the Charge describes the focus only as Meathead Movers’ “hiring practices,” and
18 the Letter concludes Meathead Movers’ “hiring practices” are discriminatory,
19 confirms exactly why the file alone is insufficient. (Ringer Decl., Exs. 2–3.) The
20 EEOC’s fallback argument that Meathead Movers should instead “seek this
21 information through written discovery” rings hollow in light of Meathead Movers’
22 pending global motion to compel. The EEOC does not otherwise explain how
23 exactly the single deposition of the investigator is less convenient, more
24 burdensome, or more expensive than some theoretical, unidentified alternative
25 source of this information.

26 **D. The Government Deliberative Process Privilege**
27 **Should Be Dealt With On A Question-By-Question At**
28

**Deposition, Not An Ex Ante Order Barring
Testimony Entirely**

The caselaw above puts the lie to the EEOC's suggestion that the deliberative process privilege effects anything approximating an unqualified prohibition against deposing EEOC personnel. If that was how it worked, courts would not routinely permit such depositions, and they do.

A threshold problem is that the EEOC is overstating the privilege. It is narrow, applying to information (usually, a document) that is "predecisional" and "deliberative" in nature. *Cal. Psych. Transitions*, 258 F.R.D. at 397. Factual information—what Meathead Movers seeks—is never privileged. *See F.T.C. v. Warner Commc'ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984) ("Purely factual material that does not reflect deliberative processes is not protected."); *Est. of Serna v. Cnty. of San Diego*, 689 F. Supp. 3d 848, 867 (S.D. Cal. 2023), *aff'd* 2024 WL 942368 (S.D. Cal. Mar. 5, 2024) ("Only those portions of a predecisional document that reflect the give and take of the deliberative process may be withheld.") (internal citation omitted). Nor is the privilege absolute. *Miller v. Pancucci*, 141 F.R.D. 292, 299 (C.D. Cal. 1992).

Barring the deposition as a whole is not appropriate where, as here, a less restrictive approach will suffice. What courts typically do is grant depositions and, to the extent the EEOC objects to an individual question on privilege grounds, it can do so at the time of the deposition. *See, e.g., Roy Farms*, 2013 WL 6903756, at *2 ("In the event that Defendant deviates from its proposed line of questioning into areas that may implicate the privilege, the EEOC is free to interpose an objection at that time"); *Greater Metroplex Interiors*, 2009 WL 412934, at *2 (N.D. Tex. Feb. 17, 2009) ("If defense counsel inquires into any matters that are privileged, cumulative, or otherwise improper, the EEOC may object on a question-by-question basis."); *Little v. Auburn Univ.*, 2010 WL 582083, at *2 (M.D. Ala. Feb. 17, 2010) (granting deposition of investigator over EEOC's

1 assertion of privilege, reasoning that “[t]he EEOC is free to assert proper privilege
2 objections, where appropriate, in the manner contemplated by Fed.R.Civ.P.
3 30(c)(2) during the deposition.”); *accord LifeCare*, 2009 WL 772834 at *2; *Giezie*,
4 2012 WL 3929446, at *8.

5 This approach would obviate the parade of non-issues and “what ifs” that
6 make up the EEOC’s Motion. The weakness of its argument is evidenced by the
7 EEOC’s largely inapposite supporting caselaw. *See NLRB v. Sears, Roebuck &*
8 *Co.*, 421 U.S. 132, 136, 150 (1975) (discussing purpose of exemptions to FOIA
9 requests in context of FOIA request for “Advice Memoranda” and “Appeals
10 Memoranda” issued by Office of General Counsel); *EEOC v. Venator Grp.*, 2000
11 WL 1059033, at *1–2 (S.D.N.Y. Mar. 27, 2000) (transcribed oral opinion
12 accompanied by no record of the filings and does not discuss or even list the actual
13 deposition topics at issue.). Nor is Meathead’s request to depose the investigator
14 akin to requesting that the EEOC provide “inter-agency advisory opinions.”
15 *EEOC v. FAPS, Inc.*, 2012 WL 1656738, at *30 (D.N.J. May 10, 2012) (seeking
16 production of reports utilized in developing relevant labor market).

17 The EEOC insists that discovery into which “specific employment practices”
18 were investigated would invade the government deliberative process privilege, but
19 not one of its cases says that. For example, the EEOC cites repeatedly to *EEOC v.*
20 *Pinal County*, but there the court quashed a subpoena to the acting director of the
21 EEOC’s local office—not an investigator. 714 F. Supp. 2d 1073, 1078 (S.D. Cal.
22 2010); *see Giezie*, WL 3929446, at *8 (distinguishing *Pinal County* on this basis
23 and permitting deposition of investigator). Further, the defendant was asking for
24 the director’s personal “interpretation of the EEOC’s determination letter,” not
25 merely factual information, as is sought here. *Pinal*, 714 F. Supp. 2d, at 1078

26 The EEOC also relies on *California Psychiatric Transitions*, even though
27 that case affirmed that “[f]actual material generally is not considered deliberative,”
28 and *granted* a defendant’s motion to compel the deposition of the EEOC

1 investigator in order to “clarify ambiguities related to factual aspects of the
2 investigation.” *Cal. Psyc. Trans*, 258 F.R.D. 391, at 401. That is what Meathead
3 is trying to do.

4 The EEOC’s remaining cases are similarly distinguishable, and miss the
5 point. Whether some information was privileged in the context of *some other*
6 deposition involving a different investigator, investigation, and claimants fails to
7 establish that *any and all* questions about what the EEOC investigated here would
8 impermissibly invade its decision-making process, which is what the EEOC is
9 arguing. *See EEOC v. Unicom Elec., Inc.*, 2007 WL 9359941, *2 (C.D. Cal. Mar.
10 9, 2007) (defendant not entitled to depose investigator to ensure there was “no
11 additional factual information that she may have failed to include in her EEOC
12 investigation” where investigator “already declared under penalty of perjury that
13 she maintained any and all facts . . . in her investigative file.”); *EEOC v.*
14 *McCormick & Schmick’s Seafood Restaurants, Inc.*, 2010 WL 2572809 at *5-6 (D.
15 MD. June 22, 2010) (acknowledging that depositions were allowed “as to the facts
16 the investigator learned during her investigation,” but denying deposition where
17 topics “on their face seek attorney work product and would require the deposition
18 of EEOC counsel or a proxy prepared by counsel”).

19 The EEOC’s discovery log undermines, not supports, the EEOC’s motion
20 for a protective order barring the investigator’s deposition. The privilege log is, on
21 its face, conclusory and appears to over-designate files without cause. The
22 EEOC’s failure to properly substantiate the privilege in its responses to Meathead
23 Movers’ written discovery is already the subject of the pending motion to compel.
24 A deposition of the investigator would shed further light on the documents that are
25 on the EEOC’s log and whether further motion practice is needed.

26 Finally, the EEOC’s proffered declaration is not competent evidence of
27 privilege. A declaration “must be made on personal knowledge, set out facts that
28 would be admissible in evidence, and show that the affiant or declarant is

competent to testify on the matters stated.” Fed. R. Civ. P. 56(c)(4); L.R. 7-7 (“Declarations shall contain only factual, evidentiary matter and shall conform as far as possible to the requirements of F.R.Civ.P. 56(c)(4).”). The EEOC’s declaration is from someone with no direct knowledge of the operative facts, which are confined to the investigator’s mind and memories. The declarant does not even assert that they discussed such matters with the investigator before declaring *ipse dixit* that the information was privileged. Nor does the declaration state what subsequent and specific decision to which the investigator’s allegedly privileged information contributed. The law is clear the Court cannot rubber stamp assertions of deliberative process privilege, which is what the EEOC’s bare-bones, copy-paste declaration asks for. *E.g., McKesson*, 264 F.R.D. at 600 (overruling privilege where agency offered only a “generalized objection” that disputed material “reflect[ed] internal discussions and analysis”).

iv. Defendant’s Proposed Resolution

Since the investigator has transferred to an out-of-state office, Meathead Movers offered to take his deposition via Zoom to minimize the cost and burden, and limit the deposition to less than a full 7-hour day.

v. Defendant’s Conclusion

Meathead Movers seeks legitimate discovery. The EEOC has not met its burden to demonstrate that the deposition of the investigator should be precluded in its entirety. The Court should deny the EEOC’s Motion for a Protective Order and award Meathead Movers its costs and fees.

Respectfully submitted,

Dated: March 13, 2025

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

By: /s/ Andrea E. Ringer

Andrea E. Ringer
Attorney for EEOC

DATED: March 13, 2025

MILLER BARONDESS, LLP

By: /s/ Lauren M. Brody

LAUREN M. BRODY
Attorney for Defendants
MEATHEAD MOVERS, INC.

Attestation Regarding Signature Pursuant to L.R. 5-4-3.4(a)(2)(i)

I, Andrea E. Ringer, hereby attest that I have obtained concurrence and authorization in the filing of this document from the other signatories to this document. I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: March 13, 2025

Respectfully submitted,

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

By: /s/ Andrea E. Ringer

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